

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

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|-----------------------------|---|-----------|
| AVERY M. RIGGSBEE, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | 1:16CV444 |
| |) | |
| W. BAIN JONES, JR., et al., |) | |
| |) | |
| Defendants. |) | |

ORDER

This matter is before this court for review of the Recommendation filed on August 14, 2017, by the Magistrate Judge in accordance with 28 U.S.C. § 636(b). (Doc. 4.) In the Recommendation, the Magistrate Judge recommends that this action be dismissed because Plaintiff failed to comply with an Order filed June 3, 2016, which directed Plaintiff to file a properly signed complaint setting forth facts and reasons for particular relief and a properly completed and signed in forma pauperis ("IFP") application by June 23, 2016 (see Doc. 3). The Recommendation was served on the parties to this action on August 14, 2017 (Doc. 5). On August 18, 2017, Plaintiff filed documents the court construes as objections to the Recommendation (Docs. 6, 7), as well as an IFP application (Doc. 8). Plaintiff's belated filings, even if in proper form, were

filed almost two months following the deadline of June 23, 2017, as established in the order of the Magistrate Judge (Doc. 3).

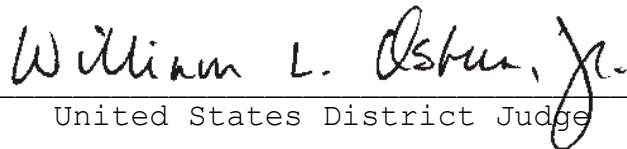
This court is required to “make a de novo determination of those portions of the [Magistrate Judge’s] report or specified proposed findings or recommendations to which objection is made.” 28 U.S.C. § 636(b)(1). This court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the [M]agistrate [J]udge. . . . [O]r recommit the matter to the [M]agistrate [J]udge with instructions.” Id. Among other things, Plaintiff’s new IFP application contains a notary verification (see Doc. 8 at 6), but neither that verification nor the signature block actually contains a signature by Plaintiff (see id. at 1, 6). The failure by Plaintiff to actually sign the IFP application in the appropriate box reflecting that the form was executed under penalty of perjury is a serious defect. See 28 U.S.C. § 1915(a) and (d).

This court has appropriately reviewed the portions of the Recommendation to which objections were made and has made a de novo determination which is in accord with the Magistrate

Judge's Recommendation. This court therefore adopts the Recommendation.¹

IT IS THEREFORE ORDERED that the Magistrate Judge's Recommendation (Doc. 4) is **ADOPTED. IT IS FURTHER ORDERED** that this action is **DISMISSED** pursuant to Federal Rule of Civil Procedure 41(b). A Judgment dismissing this action will be entered contemporaneously with this Order.

This the 12th day of September, 2017.


United States District Judge

¹ In any event, Plaintiff's other post-Recommendation filings continue to lack comprehensible facts and reasons to support any particular request for relief. (See Docs. 6, 7.)